Assigned to Judge Consuelo B. Marshall, Magistrate Judge Stephanie S. Christensen

Action Filed: September 27, 2024

Trial Date: None Set

24

25

26

2 3 4

6

5

8 9

7

10 11

12

13

14

15 16

18

19

20

21

22

23

24

25

26

27

28

17

Defendant Passes, Inc.'s Evidentiary Objections to the Declarations of Kevin Ostrowski and Evan Britton (Dkt. No. 25-6 (the "Objections")) should be rejected as they fail to establish that the matter stated in the challenged declarations are inadmissible for the purposes offered, particularly in light of the applicable evidentiary standard for a motion for preliminary injunction.

In ruling on a motion for preliminary injunction, such a motion is "customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." University of Texas v. Camenisch, 451 U.S. 390, 395 (1981). The relaxed evidentiary standard on motion for preliminary injunction is underscored by the fact that a court may even consider evidence that would be inadmissible at trial if doing so would prevent irreparable harm before trial. Flynt Distrib. Co. v. Harvey, 734 F.2d 1389, 1394 (9th Cir. 1984) ("[t]he urgency of obtaining a preliminary injunction necessitates a prompt determination and makes it difficult to obtain affidavits from persons who would be competent to testify at trial. The trial court may give even inadmissible evidence some weight, when to do so serves the purpose of preventing irreparable harm before trial.").

Passes, Inc. ("Passes") characterizes matters within the declarants' rational For example, Passes describes Kevin Ostrowski's statement that perception. Famous Birthdays' "data is valuable to companies" as improper expert testimony. (Obj. at 2:1-7.) This statement is well rationally based on Mr. Ostrowski's perception as Famous Birthdays' CTO for nearly a decade, given that companies including Passes—routinely pay Famous Birthdays to use its data. This is not an expert opinion based on scientific, technical, or otherwise specialized knowledge, but a fact that Passes cannot even reasonably dispute. Similarly, Passes describes Mr. Britton's statement that Passes' public display of infringing bios from Famous Birthdays is "undermining [Famous Birthdays'] ability to protect [its] intellectual property and rendering it vulnerable to unauthorized use and further exploitation" as

an expert opinion. (Obj. at 2:7-10.) Again, this is well within Mr. Britton's rational perception as the CEO of Famous Birthdays—Passes' act of placing infringing bios on the open web necessarily impacts Famous Birthdays' ability to protect those bios, and necessarily renders them vulnerable to further exploitation and use. Expert testimony is not necessary to establish these basic facts.

Passes also argues that the declarations include legal conclusions, such as how to interpret the contract between Passes and Famous Birthdays. (Obj. at 2:18-3:2.) Of course, Famous Birthdays has provided a true and correct copy of the contract at issue to the Court, as well as the facts supporting statements about breaches and infringement.

Famous Birthdays requests the Objections be overruled in their entirety as further set forth below:

DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)			
Material Objected To:	Grounds for Objection:	Response:	
1. The public website	Fed. R. Evid. 602. This	The referenced Terms of	
contains a robust Terms of	statement lacks foundation.	Service are attached to The	
Service, which	A witness must lay a	Declaration of Evan Britton	
emphasizes that the bios	foundation before offering	as Exhibit E, thus are	
are the intellectual	testimony about particular	available for the Court to	
property of Famous	facts or documents,	review.	
Birthdays. Ostrowski	establishing that the witness		
Decl., 6.	is competent to testify about		
	the matter at hand. Mr.		
	Ostrowski is not an attorney		
	and thus is unqualified to		

DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)			
Material Objected To:	Grounds for Objection:	Response:	
	interpret the Terms of		
	Service.		
	Fed. R. Evid. 701, 702. This		
	statement includes improper		
	opinion testimony. Lay		
	witnesses may only offer		
	opinions that are rationally		
	based on their perception and		
	helpful to understanding their		
	testimony.		
	Fed. R. Evid. 1002. Mr.		
	Ostrowski's statement		
	violates the Best Evidence		
	Rule. An original writing,		
	recording, or photograph is		
	required in order to prove its		
	content.		
2. This data is	Fed. R. Evid. 602. Without	Mr. Ostrowski, having	
valuable to companies,	any foundational support,	worked at Famous	
including because	Mr. Ostrowski opines that	Birthdays for nearly a	
companies can use the	the "data is valuable to	decade, has a foundation for	
bios to find influencers	companies," and	his statement that Famous	
relevant to their marketing	"companies can use the bios	Birthdays' data is valuable	
needs. Ostrowski Decl., ¶	to find influencers relevant	to companies, including	
9.	to their marketing needs."	stating that customers use	

DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)			
Material Objected To:	Grounds for Objection:	Response:	
	Fed. R. Evid. 702. Mr.	the data to find influencers	
	Ostrowski is not a qualified	relevant to their marketing	
	expert in valuing data or	needs; this is not scientific,	
	assessing its relevance to	technical, or other	
	unspecified companies.	specialized knowledge, but	
	Further, Mr. Ostrowski's	is within Mr. Ostrowski's	
	opinion that the "data is	rational perception. Fed. R.	
	valuable" or "relevant" is	Evid. 701.	
	not supported by reliable		
	principles or methods. Mr.		
	Ostrowski's opinion will		
	not assist the trier of fact to		
	understand the evidence or		
	determine a fact in issue.		
	Fed. R. Evid. 703. Mr.		
	Ostrowski's statement also		
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
3. This service allows	Fed. R. Evid. 602. A	The means by which	
these clients access to	witness must lay a	Famous Birthdays provides	
select portions of Famous	foundation before offering	data to its customers	
Birthdays' data, as	testimony about particular	pursuant to a contract is	
negotiated for and set	facts or documents,	well-within Mr. Ostrowski's	
	establishing that the witness	rational perception, in his	

DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)		
Material Objected To:	Grounds for Objection:	Response:
forth in the terms of their	is competent to testify about	role as CTO of Famous
contract. Ostrowski, ¶ 10.	the matter at hand. Mr.	Birthdays. Fed. R. Evid.
	Ostrowski is not an attorney	701.
	and thus is unqualified to	
	interpret the Terms of	
	Service.	
	Fed. R. Evid. 701, 702.	
	This statement includes	
	improper opinion testimony.	
	Lay witnesses may only	
	offer opinions that are	
	rationally based on their	
	perception and helpful to	
	understanding their	
	testimony.	
	Fed. R. Evid. 1002. Mr.	
	Ostrowski's statement	
	violates the Best Evidence	
	Rule. An original writing,	
	recording, or photograph is	
	required in order to prove	
	its content.	
4. Famous Birthdays	Fed. R. Evid. 602. A	The means by which
provides Famous	witness must lay a	Famous Birthdays provides
Birthdays Pro customers	foundation before offering	data to its customers

DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)			
Material Objected To:	Grounds for Objection:	Response:	
two methods to access	testimony about particular	pursuant to a contract is	
data provided for in their	facts or documents,	well-within Mr. Ostrowski's	
contractual agreement.	establishing that the witness	rational perception, in his	
Ostrowski, ¶ 11.	is competent to testify about	role as CTO of Famous	
	the matter at hand. Mr.	Birthdays. Fed. R. Evid.	
	Ostrowski is not an attorney	701.	
	and thus is unqualified to		
	interpret the "contractual		
	agreement."		
	Fed. R. Evid. 701, 702.		
	This statement includes		
	improper opinion testimony.		
	Lay witnesses may only		
	offer opinions that are		
	rationally based on their		
	perception and helpful to		
	understanding their		
	testimony.		
	Fed. R. Evid. 1002. Mr.		
	Ostrowski's statement		
	violates the Best Evidence		
	Rule. An original writing,		
	recording, or photograph is		
	required in order to prove		
	its content.		

DECLARAT	DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)					
Material Objected To:	Grounds for Objection:	Response:				
5. [W]hen it has been	Fed. R. Evid. 602. A	The means by which				
contractually agreed to (as	witness must lay a	Famous Birthdays provides				
was the case with Passes),	foundation before offering	data to its customers				
a Famous Birthdays Pro	testimony about particular	pursuant to a contract is				
customer is provided	facts or documents,	well-within Mr. Ostrowski's				
limited access to Famous	establishing that the witness	rational perception, in his				
Birthdays' API, which is	is competent to testify about	role as CTO of Famous				
another means to access	the matter at hand. Mr.	Birthdays. Fed. R. Evid.				
Famous Birthdays' data.	Ostrowski is not an attorney	701.				
Ostrowski, ¶ 14.	and thus is unqualified to					
	interpret the "contractual					
	agreement."					
	Fed. R. Evid. 701, 702.					
	This statement includes					
	improper opinion testimony.					
	Lay witnesses may only					
	offer opinions that are					
	rationally based on their					
	perception and helpful to					
	understanding their					
	testimony.					
	Fed. R. Evid. 703. Mr.					
	Ostrowski's statement also					
	improperly offers an					

Material Objected To:	Grounds for Objection:	Response:	
	opinion on an ultimate issue		
	in the case.		
	Fed. R. Evid. 1002. In		
	addition, Mr. Ostrowski's		
	statement violates the Best		
	Evidence Rule. An original		
	writing, recording, or		
	photograph is required in		
	order to prove its content.		
6. The API and	Fed. R. Evid. 602. A	The means by which	
dashboard function	witness must lay a	Famous Birthdays provides	
similarly, and are both	foundation before offering	data to its customers	
curated to technologically	testimony about particular	pursuant to a contract is	
limit the accessible data to	facts or documents,	well-within Mr. Ostrowski'	
the same limits set forth in	establishing that the witness	rational perception, in his	
the customer's contract	is competent to testify about	role as CTO of Famous	
with Famous Birthdays.	the matter at hand. Mr.	Birthdays. Fed. R. Evid.	
Ostrowski Decl., ¶16	Ostrowski is not an attorney	701.	
	and thus is unqualified to		
	interpret the "customer's		
	contract with Famous		
	Birthdays."		
	Fed. R. Evid. 701, 702.		
	Lay witnesses may only		
	offer opinions that are		

	1			
	1	DECLARAT	TION OF KEVIN OSTROWS	KI (DKT. 10-1)
	2 3	Material Objected To:	Grounds for Objection:	Response:
	4		rationally based on their	
	5		perception and helpful to	
	6		understanding their	
	7		testimony. According to his	
	8		public LinkedIn page, Mr.	
	9		Ostrowski has a background	
	10		in computer arts with a	
	11		focus on 3D	
	12		modeling/animation and FX	
44/1 fax	13		for film and video. Without	
F1.310.788.4400 tel +1.310.788.4471 fax	14		any foundational support,	
10.788.4400 te	15		Mr. Ostrowski opines on	
t.F+	16		how APIs and the	
	17		dashboard function to	
	18		impose background	
	19		technological limitations.	
	20		Fed. R. Evid. 703. Mr.	
	21		Ostrowski's statement also	
	22		improperly offers an	
	23		opinion on an ultimate issue	
	24		in the case.	
	25		Fed. R. Evid. 1002. In	
	26		addition, Mr. Ostrowski's	
	27		statement violates the Best	
	28		Evidence Rule. An original	

DECLARAT	TION OF KEVIN OSTROWS	KI (DKT. 10-1)
Material Objected To:	Grounds for Objection:	Response:
	writing, recording, or	
	photograph is required in	
	order to prove its content.	
7. Thus, if a contract	Fed. R. Evid. 602. A	The means by which
limits a customer to a	witness must lay a	Famous Birthdays provides
certain number of monthly	foundation before offering	data to its customers
searches of profiles of	testimony about particular	pursuant to a contract is
celebrities and	facts or documents,	well-within Mr. Ostrowski's
influencers, both the	establishing that the witness	rational perception, in his
dashboard and the API	is competent to testify about	role as CTO of Famous
calls contain a technical	the matter at hand. Mr.	Birthdays. Fed. R. Evid.
limit that prevents the	Ostrowski is not an attorney	701.
customer from exceeding	and thus is unqualified to	
their authorized search	interpret the "contract	
limit.	limits."	
	Fed. R. Evid. 701, 702. Lay	
	witnesses may only offer	
	opinions that are rationally	
	based on their perception	
	and helpful to	
	understanding their	
	testimony. According to his	
	public LinkedIn page, Mr.	
	Ostrowski has a background	

in computer arts with a

1			
2	DECLARA	TION OF KEVIN OSTROWS	KI (DKT. 10-1)
2 3	Material Objected To:	Grounds for Objection:	Response:
4		focus on 3D modeling/	
5		animation and FX for film	
6		and video. Without any	
7		foundational support, Mr.	
8		Ostrowski opines on how	
9		API's and the dashboard	
10		function to impose	
11		background technological	
12		limitations.	
13		Fed. R. Evid. 703. Mr.	
14		Ostrowski's statement also	
15		improperly offers an	
16		opinion on an ultimate issue	
17		in the case.	
18		Fed. R. Evid. 1002. In	
19		addition, Mr. Ostrowski's	
20		statement violates the Best	
21		Evidence Rule. An original	
22		writing, recording, or	
23		photograph is required in	
24		order to prove its content.	
25	8. There are also	Fed. R. Evid. 602. A	Mr. Ostrowski attached a
26	Terms of Service on	witness must lay a	true and correct copy of
27	Famous Birthdays Pro that	foundation before offering	these Terms of Service to
28	further advise customers	testimony about particular	

	1				
2			DECLARAT	TION OF KEVIN OSTROWS	KI (DKT. 10-1)
	3	Material	Objected To:	Grounds for Objection:	Response:
	4	of the lin	nitations on their	facts or documents,	his Declaration as Exhibit
	5	use of the	e platform.	establishing that the witness	A.
	6	Ostrowsk	xi Decl., ¶ 17.	is competent to testify about	
	7			the matter at hand. Mr.	
	8			Ostrowski is not an attorney	
	9			and thus is unqualified to	
	10			interpret the Terms of	
	11			Service.	
	12			Fed. R. Evid. 701, 702. Lay	
	13			witnesses may only offer	
	14			opinions that are rationally	
	15			based on their perception	
	16			and helpful to	
	17			understanding their	
	18			testimony.	
	19			Fed. R. Evid. 1002. In	
	20			addition, Mr. Ostrowski's	
	21			statement violates the Best	
	22			Evidence Rule. An original	
	23			writing, recording, or	
	24			photograph is required in	
	25			order to prove its content.	
	26	9. A:	fter Famous	Fed. R. Evid. 602. Mr.	As CTO, Mr. Ostrowski
	27	Birthdays	s and Passes	Ostrowski's statement is	was responsible for
	28	entered in	nto the Services	conclusory, speculative, and	providing this access to

DECLARA	TION OF KEVIN OSTROWS	KI (DKT. 10-1)
Material Objected To:	Grounds for Objection:	Response:
Agreement between	not based on personal	Passes, this it is well-within
Famous Birthdays and	knowledge. Mr. Ostrowski	Mr. Ostrowski's rational
Passes on or about	does not offer any specific	perception. Fed. R. Evid.
March 29, 2024 (the	facts to support this	701.
"Services Agreement"),	conclusion.	
Famous Birthdays	Nor does he explain how it	
provided limited API	is that he has the knowledge	
access and Famous	necessary to reach the stated	
Birthdays Pro login	conclusion.	
details to Passes.	Fed. R. Evid. 703. Mr.	
Ostrowski Decl., ¶ 18.	Ostrowski's statement also	
	improperly offers an	
	opinion on an ultimate issue	
	in the case.	
	Fed. R. Evid. 1002. In	
	addition, Mr. Ostrowski's	
	statement violates the Best	
	Evidence Rule. An original	
	writing, recording, or	
	photograph is required in	
	order to prove its content.	
10. These seven API	Fed. R. Evid. 602. Mr.	As the CTO of Famous
calls are limited in their	Ostrowski's statement is	Birthdays, who is in charge
functionality consistent	conclusory, speculative, and	of writing and overseeing
with the contractual	not based on personal	its API (Ostrowski Decl. ¶

DECLARAT	TION OF KEVIN OSTROWS	KI (DKT. 10-1)
Material Objected To:	Grounds for Objection:	Response:
limitations in the Services	knowledge. Mr. Ostrowski	3), the functionality of the
Agreement.	does not offer any specific	API calls that he wrote is
	facts to support this	well-within Mr. Ostrowski's
	conclusion. Nor does he	rational perception. Fed. R.
	explain how it is that he has	Evid. 701.
	the knowledge necessary to	
	reach the stated conclusion.	
	Fed. R. Evid. 701, 702.	
	This statement includes	
	improper opinion testimony.	
	Lay witnesses may only	
	offer opinions that are	
	rationally based on their	
	perception and helpful to	
	understanding their	
	testimony. According to his	
	public LinkedIn page, Mr.	
	Ostrowski has a background	
	in computer arts with a	
	focus on 3D	
	modeling/animation and FX	
	for film and video. Without	
	any foundational support,	
	Mr. Ostrowski opines on	
	how APIs and the	

	DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)		
Ma	aterial Objected To:	Grounds for Objection:	Response:
		dashboard function to	
		impose background	
		technological limitations.	
		Fed. R. Evid. 703. Mr.	
		Ostrowski's statement also	
		improperly offers an	
		opinion on an ultimate issue	
		in the case.	
		Fed. R. Evid. 1002. In	
		addition, Mr. Ostrowski's	
		statement violates the Best	
		Evidence Rule. An original	
		writing, recording, or	
		photograph is required in	
		order to prove its content.	
11.	. For its own	Fed. R. Evid. 602. Mr.	As the CTO of Famous
int	ernal use, Famous	Ostrowski's statement that	Birthdays, who is in char
Biı	rthdays has separate	separate internal API	of writing and overseeing
int	ernal API endpoints, as	endpoints are "common for	its API (Ostrowski Decl.
is	common for most	most websites" is	3), the functionality of the
we	bsites. Ostrowski Decl.,	conclusory, speculative, and	API calls that he wrote is
¶ 2	23.	not based on personal	well-within Mr. Ostrows
		knowledge. Mr. Ostrowski	rational perception. Fed.
		does not offer any specific	Evid. 701.
		facts to support this	

	DECLARA	KI (DKT. 10-1)	
M	aterial Objected To:	Grounds for Objection:	Response:
		conclusion. Nor does he	
		explain how it is that he has	
		the knowledge necessary to	
		reach the stated conclusion.	
		Fed. R. Evid. 701, 702.	
		This statement includes	
		improper opinion testimony.	
		Lay witnesses may only	
		offer opinions that are	
		rationally based on their	
		perception and helpful to	
		understanding their	
		testimony. According to his	
		public LinkedIn page, Mr.	
		Ostrowski has a background	
		in computer arts with a	
		focus on 3D	
		modeling/animation and FX	
		for film and video.	
12	. These separate	Fed. R. Evid. 602. Mr.	As the CTO of Famous
in	ernal API endpoints	Ostrowski does not offer	Birthdays, who is in char
W	re not shared with	any specific facts to support	of writing and overseeing
Pa	sses, or any Famous	this conclusion. Nor does he	its API (Ostrowski Decl.
Bi	rthdays Pro customers	explain how it is that he has	3), the functionality of th
			API calls that he wrote is

DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)			
Material Objected To:	Grounds for Objection:	Response:	
for that matter. Ostrowski,	the knowledge necessary to	well-within Mr. Ostrowski's	
¶ 25.	reach the stated conclusion.	rational perception. Fed. R	
		Evid. 701.	
13. Passes accessed the	Fed. R. Evid. 602. Mr.	Mr. Ostrowski offers a fact	
Famous Birthdays Pro	Ostrowski does not offer	within his rational	
dashboard, using Guo's	any specific facts to support	perception, and provides a	
login credentials.	this conclusion. Nor does he	screenshot showing Ms.	
Ostrowski Decl., ¶ 26	explain how it is that he has	Guo's credentials as	
	the knowledge necessary to	performing 106,000 lookup	
	reach the stated conclusion.	on Famous Birthdays Pro	
	Fed. R. Evid. 703. Mr.	during the relevant time	
	Ostrowski's statement also	period. Fed. R. Evid. 701	
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
14. Once logged in, a	Fed. R. Evid. 701, 702.	As the CTO of Famous	
person sophisticated in	This statement also includes	Birthdays, Mr. Ostrowski is	
computer science pulled	improper opinion testimony.	the individual in charge of	
up Famous Birthdays'	Lay witnesses may only	its source code and API	
source code, which can	offer opinions that are	calls (Ostrowski Decl. ¶¶ 2	
only be done by accessing	rationally based on their	4) and has significant	
Famous Birthdays'	perception and helpful to	experience as a systems	
backend code or reverse	understanding their	administrator and	
engineering its system.	testimony. According to his	developer, lead architect,	
Ostrowski Decl., ¶ 26	public LinkedIn page, Mr.	software engineer and now	

DECLARAT	DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)		
Material Objected To:	Grounds for Objection:	Response:	
	Ostrowski has a background	a CTO—thus the testimony	
	in computer arts with a	offered is pursuant to his	
	focus on 3D	rational perception. Fed. R.	
	modeling/animation and FX	Evid. 701. Moreover,	
	for film and video.	Passes' opposition has	
		confirmed that they used the	
		API call for "rank graph"	
		data that was only available	
		through the source code,	
		rather than using the API	
		calls provided in the	
		documentation given to	
		Passes pursuant to the	
		Services Agreement.	
15. This person then	Fed. R. Evid. 602. Mr.	As the CTO of Famous	
looked over the various	Ostrowski's statement is	Birthdays, Mr. Ostrowski is	
internal API calls used to	conclusory, speculative, and	the individual in charge of	
generate the webpage.	not based on personal	its source code and API	
This person located the	knowledge. Mr. Ostrowski	calls (Ostrowski Decl. ¶¶ 2-	
API call for historical	does not offer any specific	4) and has significant	
rank graph data for a	facts to support this	experience as a systems	
given celebrity or	conclusion. Nor does he	administrator and	
influencer. Ostrowski	explain how it is that he has	developer, lead architect,	
Decl., ¶ 27.	the knowledge necessary to	software engineer and now	
	reach the stated conclusion.	a CTO—thus the testimony	

Katten Muchin Rosenman LLP 221 Avenue dr Mas Sas, Suite 1100 Los Angeles CA 9067-5010 +1.310.788.4400 tel +1.310.788.447

DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)			
Material Objected To:	Grounds for Objection:	Response:	
	Fed. R. Evid. 701, 702.	offered is pursuant to his	
	This statement also includes	rational perception. Fed. R.	
	improper opinion testimony.	Evid. 701. Moreover,	
	Lay witnesses may only	Passes' opposition has	
	offer opinions that are	confirmed that they used the	
	rationally based on their	API call for "rank graph"	
	perception and helpful to	data that was only available	
	understanding their	through the source code,	
	testimony. According to his	rather than using the API	
	public LinkedIn page, Mr.	calls provided in the	
	Ostrowski has a background	documentation given to	
	in computer arts with a	Passes pursuant to the	
	focus on 3D	Services Agreement.	
	modeling/animation and FX		
	for film and video.		
	Fed. R. Evid. 703. Mr.		
	Ostrowski's statement also		
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
16. But, instead of	Fed. R. Evid. 602. Mr.	As the CTO of Famous	
using one of the API calls	Ostrowski's statement is	Birthdays, Mr. Ostrowski is	
provided to Passes	conclusory, speculative, and	the individual in charge of	
pursuant to the contract,	not based on personal	its source code and API	
Passes instead used the	knowledge. Mr. Ostrowski	calls (Ostrowski Decl. ¶¶ 2-	

DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)			
Material Objected To:	Grounds for Objection:	Response:	
historical rank graph API	does not offer any specific	4) and has significant	
call that it had	facts to support this	experience as a systems	
surreptitiously extracted	conclusion. Nor does he	administrator and	
from the Famous	explain how it is that he has	developer, lead architect,	
Birthdays source code	the knowledge necessary to	software engineer and now	
while logged into the	reach the stated conclusion.	a CTO—thus the testimony	
dashboard. Ostrowski	Fed. R. Evid. 701, 702.	offered is pursuant to his	
Decl., ¶ 29.	This statement also includes	rational perception. Fed. R.	
	improper opinion testimony.	Evid. 701. Moreover,	
	Lay witnesses may only	Passes' opposition has	
	offer opinions that are	confirmed that they used the	
	rationally based on their	API call for "rank graph"	
	perception and helpful to	data that was only available	
	understanding their	through the source code,	
	testimony. According to his	rather than using the API	
	public LinkedIn page, Mr.	calls provided in the	
	Ostrowski has a background	documentation given to	
	in computer arts with a	Passes pursuant to the	
	focus on 3D	Services Agreement.	
	modeling/animation and FX	Moreover, Mr. Ostrowski	
	for film and video.	has provided, as Exhibit D	
	Fed. R. Evid. 703. Mr.	to his Declaration, the API	
	Ostrowski's statement also	call logs proving this fact.	
	improperly offers an		

DECLARA	DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)			
Material Objected To:	Grounds for Objection:	Response:		
	opinion on an ultimate issue			
	in the case.			
17. A true and correct	Fed. R. Evid. 602. Mr.	Mr. Ostrowski has attached		
copy of Famous	Ostrowski does not offer	the best evidence—the		
Birthdays' internal	any specific facts to support	actual screenshot of the		
dashboard reflecting the	this conclusion. Nor does he	dashboard to his		
over 106,000 lookups by	explain how it is that he has	Declaration as Exhibit E.		
Guo is attached hereto as	the knowledge necessary to	As CTO of Famous		
Exhibit E. Ostrowski	reach the stated conclusion.	Birthdays, this dashboard is		
Decl., ¶ 30.	Fed. R. Evid. 1002.1n	clearly within his rational		
	addition, Mr. Ostrowski's	perception. Fed. R. Evid.		
	statement violates the Best	701.		
	Evidence Rule. An original			
	writing, recording, or			
	photograph is required in			
	order to prove its content.			
18. These lookups	Fed. R. Evid. 602. Mr.	As the CTO of Famous		
could not have been	Ostrowski does not offer	Birthdays, Mr. Ostrowski is		
performed with the API	any specific facts to support	the individual in charge of		
documentation provided	this conclusion. Nor does he	its source code and API		
to Defendants as part of	explain how it is that he has	calls (Ostrowski Decl. ¶¶ 2-		
the Services Agreement,	the knowledge necessary to	4) and has significant		
Ostrowski Decl., ¶ 31.	reach the stated conclusion.	experience as a systems		
	Fed. R. Evid. 701, 702.	administrator and		
	This statement includes	developer, lead architect,		

DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)			
Material Objected To:	Grounds for Objection:	Response:	
	improper opinion testimony.	software engineer and now	
	Lay witnesses may only	a CTO—thus the testimony	
	offer opinions that are	offered is pursuant to his	
	rationally based on their	rational perception. Fed. R.	
	perception and helpful to	Evid. 701. Moreover,	
	understanding their	Passes' opposition has	
	testimony. According to his	confirmed that they used the	
	public LinkedIn page, Mr.	API call for "rank graph"	
	Ostrowski has a background	data that was only available	
	in computer arts with a	through the source code,	
	focus on 3D	rather than using the API	
	modeling/animation and FX	calls provided in the	
	for film and video.	documentation given to	
	Fed. R. Evid. 703. Mr.	Passes pursuant to the	
	Ostrowski's statement also	Services Agreement	
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
19. The URL list of	Fed. R. Evid. 602. Mr.	As the CTO of Famous	
our bios, and their relative	Ostrowski does not offer	Birthdays, Mr. Ostrowski is	
ranking by traffic, are not	any specific facts to support	the individual in charge of	
provided as part of	this conclusion. Nor does he	its source code and API	
Famous Birthdays Pro,	explain how it is that he has	calls (Ostrowski Decl. ¶¶ 2-	
and were not provided in	the knowledge necessary to	4), it is within Mr.	
the API documentation	reach the stated conclusion.	Ostrowski's rational	

Material Objected To:	Grounds for Objection:	Response:
given to Defendants in	Fed. R. Evid. 701, 702.	perception what is provided
connection with the	This statement includes	to Famous Birthdays'
Services Agreement.	improper opinion testimony.	customers, including
Ostrowski Decl., ¶ 32.	Lay witnesses may only	Passes. Fed. R. Evid. 701.
	offer opinions that are	
	rationally based on their	
	perception and helpful to	
	understanding their	
	testimony. According to his	
	public LinkedIn page, Mr.	
	Ostrowski has a background	
	in computer arts with a	
	focus on 3D	
	modeling/animation and FX	
	for film and video.	
20. The only way	Fed. R. Evid. 602. Mr.	As the CTO of Famous
Defendants could have	Ostrowski's statement is	Birthdays, Mr. Ostrowski i
accessed our URL list is	conclusory, speculative, and	the individual in charge of
by seeking to exploit our	not based on personal	its source code and API
sitemap. Ostrowski Decl.,	knowledge. Mr. Ostrowski	calls (Ostrowski Decl. ¶¶ 2
¶ 33.	does not offer any specific	4) and has significant
	facts to support this	experience as a systems
	conclusion. Nor does he	administrator and
	explain how it is that he has	developer, lead architect,
		software engineer and now

1		DECLARATION OF KEVIN OSTROWSKI (DKT. 10-1)			
	2 3	Material Objected To:	Grounds for Objection:	Response:	
	4		the knowledge necessary to	a CTO—thus the testimony	
	5		reach the stated conclusion.	offered is pursuant to his	
	6		Fed. R. Evid. 701, 702.	rational perception as to	
	7		This statement includes	where such URL lists of	
	8		improper opinion testimony.	Famous Birthdays' bios	
	9		Lay witnesses may only	would be available. Fed. R.	
	10		offer opinions that are	Evid. 701.	
	11		rationally based on their		
	12		perception and helpful to		
3.4471 fax	13		understanding their		
+1.310.788.4400 tel +1.310.788.4471 fax	14		testimony. According to his		
310.788.4400	15		public LinkedIn page, Mr.		
Ŧ	16		Ostrowski has a background		
	17		in computer arts with a		
	18		focus on 3D		
	19		modeling/animation and FX		
	20		for film and video.		
	21		Fed. R. Evid. 703. Mr.		
	22		Ostrowski's statement also		
	23		improperly offers an		
	24		opinion on an ultimate issue		
	25		in the case.		
	26				
	27				
		T. Control of the Con			

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To:	Grounds for Objection:	Response:	
21. Famous Birthdays	Fed. R. Evid. 602. Mr.	As CEO of Famous	
registered creative works	Britton's statement is	Birthdays, Mr. Britton is	
of authorship with the	conclusory, speculative, and	fully aware of when he	
United States Copyright	not based on personal	registered his company's	
Office in October 2018,	knowledge. He does not	copyrights. Fed. R. Evid.	
October 2021, and	offer any specific facts to	701. Moreover, Mr. Britton	
February 2022, and it	support this conclusion. Nor	ahs provided the copyright	
corrected its October 2018	does he explain how it is	registrations as Exhibits A-	
registration through a	that he has the knowledge	D.	
supplemental registration	necessary to reach the stated		
in February 2022 as well.	conclusion.		
Britton Decl., ¶ 6.	Fed. R. Evid. 701, 702.		
	This statement includes		
	improper opinion testimony.		
	Lay witnesses may only		
	offer opinions that are		
	rationally based on their		
	perception and helpful to		
	understanding their		
	testimony. According to his		
	public LinkedIn page, Mr.		
	Britton has a background in		
	marketing.		

Fed. R. Evid. 1002. In

addition, Mr. Britton's

DECLARATION OF EVAN BRITTON (DKT. 11-1)		
Material Objected To:	Grounds for Objection:	Response:
	statement violates the Best	
	Evidence Rule. An original	
	writing, recording, or	
	photograph is required in	
	order to prove its content.	
22. Exhibits A, B, C,	Fed. R. Evid. 602. Mr.	It is unclear how providi
D. Britton Decl., ¶¶ 7-10.	Britton's statement about	authenticated copies of
	Exhibits A, B, C, and D is	copyright registrations is
	conclusory, speculative, and	somehow speculative or
	not based on personal	violative of the Best
	knowledge.	Evidence Rule.
	Fed. R. Evid. 1002. In	
	addition, Mr. Britton's	
	statement violates the Best	
	Evidence Rule. An original	
	writing, recording, or	
	photograph is required in	
	order to prove its content.	
23. The Terms of Use	Fed. R. Evid. 602. A	Mr. Britton provided a co
available on Famous	witness must lay a	of these Terms of use as
Birthdays' website also	foundation before offering	Exhibit E to his
inform its users that its	testimony about particular	Declaration.
"platform contains	facts or documents,	
copyrighted material	establishing that the witness	
including, but not limited	is competent to testify about	

L	DECLARA	ATION OF EVAN BRITTON	
	Material Objected To:	Grounds for Objection:	Response:
	to, text and video."	the matter at hand. Mr.	
	Britton Decl., ¶ 11	Britton is not an attorney	
		and thus is unqualified to	
		interpret the Terms of Use.	
		Fed. R. Evid. 701, 702.	
		This statement includes	
		improper opinion testimony.	
		Lay witnesses may only	
		offer opinions that are	
		rationally based on their	
		perception and helpful to	
		understanding their	
		testimony. In addition,	
		Fed. R. Evid. 1002. In	
		addition, Mr. Britton's	
		statement violates the Best	
		Evidence Rule. An original	
		writing, recording, or	
		photograph is required in	
		order to prove its content.	
	24. The Terms of Use	Fed. R. Evid. 602. This	Mr. Britton provided a cop
	condition all access to and	statement lacks foundation.	of these Terms of use as
	use of Famous Birthdays'	A witness must lay a	Exhibit E to his
	platform on compliance	foundation before offering	Declaration.
	with an express	testimony about particular	

DECLAR	ATION OF EVAN BRITTON	(DKT. 11-1
Material Objected To:	Grounds for Objection:	Response:
prohibition from	facts or documents,	
"publishing, transmitting,	establishing that the witness	
archiving, or exploiting	is competent to testify about	
the content published on	the matter at hand. Mr.	
our platform." Britton	Britton is not an attorney	
Decl., ¶ 11	and thus is unqualified to	
	interpret the Terms of Use.	
	Fed. R. Evid. 701, 702.	
	This statement includes	
	improper opinion testimony.	
	Lay witnesses may only	
	offer opinions that are	
	rationally based on their	
	perception and helpful to	
	understanding their	
	testimony.	
	Fed. R. Evid. 703. Mr.	
	Britton's statement also	
	improperly offers an	
	opinion on an ultimate issue	
	in the case.	
	Fed. R. Evid. 1002. In	
	addition, Mr. Britton's	
	statement violates the Best	
	Evidence Rule. An original	

DECLARATION OF EVAN BRITTON (DKT. 11-1)				
Material Objected To:	Grounds for Objection:	Response:		
	writing, recording, or			
	photograph is required in			
	order to prove its content.			
25. As a result of its	Fed. R. Evid. 602. Mr.	As founder and CEO of		
early and sustained	Britton's statement is	Famous Birthdays, the		
investment in the booming	conclusory, speculative, and	company's business model		
"creator economy,"	not based on personal	and customer base are		
companies seek to enter	knowledge. He does not	clearly within his rational		
into license agreements	offer any specific facts to	perception, including why		
with Famous Birthdays to	support this conclusion. Nor	customers seek out Famous		
access its data it obtains	does he explain how it is	Birthdays. This is well		
by monitoring user	that he has the knowledge	within his rational		
activity, and bios to	necessary to reach the stated	perception and does not		
determine which	conclusion.	require scientific, technical		
influencers are most	Fed. R. Evid. 701, 702.	or highly specialized		
applicable to their	This statement includes	knowledge. Fed. R. Evid.		
marketing needs. Britton	improper opinion testimony.	701.		
Decl., ¶ 12	Lay witnesses may only			
	offer opinions that are			
	rationally based on their			
	perception and helpful to			
	understanding their			
	testimony. According to his			
	public LinkedIn page, Mr.			

DECLARA	ATION OF EVAN BRITTON	(DKT. 11-1)
Material Objected To:	Grounds for Objection:	Response:
	Britton has a background in	
	marketing.	
26. Famous Birthdays	Fed. R. Evid. 1002. In	The Services Agreement is
entered into a limited	addition, Mr. Britton's	provided as Exhibit F to Mr.
services agreement (the	statement violates the Best	Britton's Declaration.
"Services Agreement")	Evidence Rule. An original	
with Defendant Passes,	writing, recording, or	
Inc. ("Passes") on	photograph is required in	
March 1, 2024, giving it	order to prove its content.	
access to Famous		
Birthdays Pro. Britton		
Decl., ¶ 14.		
27. The Services	Fed. R. Evid. 602. Mr.	The Services Agreement is
Agreement limits Passes	Britton does not offer any	provided as Exhibit F to Mr.
to 2,500 bio lookups per	specific facts to support this	Britton's Declaration.
month. Britton Decl., ¶	conclusion. Nor does he	
16.	explain how it is that he has	
	the knowledge necessary to	
	reach the stated conclusion.	
	Fed. R. Evid. 703. Mr.	
	Britton's statement also	
	improperly offers an	
	opinion on an ultimate issue	
	in the case. Mr. Britton is	
	not an attorney and thus is	

Mater	ial Objected To:	Grounds for Objection:	Response:
			-
		unqualified to interpret the	
		Terms of Service.	
		Fed. R. Evid. 703. Mr.	
		Britton's statement also	
		improperly offers an	
		opinion on an ultimate issue	
		in the case.	
		Fed. R. Evid. 1002. In	
		addition, Mr. Britton's	
		statement violates the Best	
		Evidence Rule. An original	
		writing, recording, or	
		photograph is required in	
		order to prove its content.	
28.	Famous Birthdays'	Fed. R. Evid. 602. Mr.	A screenshot of the inter
interna	al dashboard reflects	Britton's statement is	dashboard confirming the
that D	efendant Lucy Guo	conclusory, speculative, and	facts is attached to Mr.
("Guo	" and with Passes,	not based on personal	Britton's Declaration as
"Defei	ndants")—alone ran	knowledge. He does not	Exhibit JJ.
106,12	24 lookups in the	offer any specific facts to	
month	of April. Britton	support this conclusion. Nor	
Decl.,	¶ 16.	does he explain how it is	
		that he has the knowledge	
		necessary to reach the stated	

conclusion.

Iaterial Objected To:	Grounds for Objection:	Response:
	Fed. R. Evid. 701, 702.	
	This statement includes	
	improper opinion testimony.	
	Lay witnesses may only	
	offer opinions that are	
	rationally based on their	
	perception and helpful to	
	understanding their	
	testimony. Mr. Bitton has a	
	background in marketing.	
	Fed. R. Evid. 703. Mr.	
	Britton's statement also	
	improperly offers an	
	opinion on an ultimate issue	
	in the case.	
	Fed. R. Evid. 1002. In	
	addition, Mr. Britton's	
	statement violates the Best	
	Evidence Rule. An original	
	writing, recording, or	
	photograph is required in	
	order to prove its content.	
29. After entering into	Fed. R. Evid. 602. Mr.	It is not he
the Services Agreement, I	Britton does not offer any	Britton to s
learned that Passes	specific facts to support this	accessed th

Katten Katten Muchin Rosenman LLP 2121 Avenue of the Stars, Suite 1100 Los Angeles, CA 90067-5010

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To:	Grounds for Objection:	Response:	
launched a website to	conclusion. Nor does he	website. Mr. Britton has	
compete with Famous	explain how it is that he has	also included countless	
Birthdays —	the knowledge necessary to	screenshots from the	
www.passes.com/wiki.	reach the stated conclusion.	website as exhibits to his	
Britton Decl., ¶ 17	Fed. R. Evid. 802. Hearsay	declaration. Moreover,	
	is not admissible. Mr.	Passes' Opposition	
	Britton does not explain	concedes that it launched	
	how he learned that Passes	this website.	
	launched a website, but he		
	impermissibly offers this		
	out of court statement to		
	prove as true that Passes		
	launched a website to		
	compete with Famous		
	Birthdays.		
	Fed. R. Evid. 1002. In		
	addition, Mr. Britton's		
	statement violates the Best		
	Evidence Rule. An original		
	writing, recording, or		
	photograph is required in		
	order to prove its content.		
30. [A]ll of which are	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
copied from the	Britton's statement is	based on his rational	
corresponding bios from	conclusory, speculative, and	perception, and has	

1	DECLARA	DECLARATION OF EVAN BRITTON (DKT. 11-1)			
2 3	Material Objected To:	Grounds for Objection:	Response:		
4	Famous Birthdays. Britton	not based on personal	provided underlying		
5	Decl., ¶ 18	knowledge. He does not	screenshots confirming the		
6		offer any specific facts to	copying of Famous		
7		support this conclusion. Nor	Birthdays' bios by Passes.		
8		does he explain how it is	Fed. R. Evid. 701.		
9		that he has the knowledge	Moreover, Passes'		
10		necessary to reach the stated	Opposition, including the		
11		conclusion.	Declaration of Patrick		
12		Fed. R. Evid. 701, 702.	Zhang, confirms that Passes		
13		This statement includes	scraped Famous Birthdays'		
14		improper opinion testimony.	bios, fed them into		
15		Lay witnesses may only	ChatGPT, and then used the		
16		offer opinions that are	results to launch Passes		
17		rationally based on their	Wiki.		
18		perception and helpful to			
19		understanding their			
20		testimony. According to his			
21		public LinkedIn page, Mr.			
22		Britton has a background in			
23		marketing.			
24		Fed. R. Evid. 703. Mr.			
25		Bitton's statement also			
26		improperly offers an			
27		opinion on an ultimate issue			
28		in the case.			

DECLARATION OF EVAN BRITTON (DKT. 11-1)				
Material Objected To:	Grounds for Objection:	Response:		
31. Based on my	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying		
review of the bios on	Britton's statement is	based on his rational		
Passes wiki, it's clear that	conclusory, speculative, and	perception, and has		
Passes compiled a list of	not based on personal	provided underlying		
over 100,000 URLs	knowledge. He does not	screenshots confirming the		
unique to Famous	offer any specific facts to	copying of Famous		
Birthdays' website to use	support this conclusion. Nor	Birthdays' bios by Passes.		
to copy Famous	does he explain how it is	Fed. R. Evid. 701.		
Birthdays' bios Britton	that he has the knowledge	Moreover, Passes'		
Decl., ¶ 20	necessary to reach the stated	Opposition, including the		
	conclusion.	Declaration of Patrick		
	Fed. R. Evid. 701, 702.	Zhang, confirms that Passes		
	This statement includes	scraped Famous Birthdays'		
	improper opinion testimony.	bios, fed them into		
	Lay witnesses may only	ChatGPT, and then used the		
	offer opinions that are	results to launch Passes		
	rationally based on their	Wiki.		
	perception and helpful to			
	understanding their			
	testimony. According to his			
	public LinkedIn page, Mr.			
	Britton has a background in			
	marketing.			
	Fed. R. Evid. 703. Mr.			

Britton's statement also

DECLARATION OF EVAN BRITTON (DKT. 11-1)				
Material Objected To:	Grounds for Objection:	Response:		
	improperly offers an			
	opinion on an ultimate issue			
	in the case.			
32. Famous Birthdays	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying		
staff, including myself	Britton's statement is	based on his rational		
personally, have identified	conclusory, speculative, and	perception, and has		
tens of thousands of bios	not based on personal	provided underlying		
featured on Passes Wiki	knowledge. He does not	screenshots confirming the		
that reflect data and	offer any specific facts to	copying of Famous		
copyrighted bios stolen	support this conclusion. Nor	Birthdays' bios by Passes.		
from Famous Birthdays.	does he explain how it is	Fed. R. Evid. 701.		
Britton Decl., ¶ 21	that he has the knowledge	Moreover, Passes'		
	necessary to reach the stated	Opposition, including the		
	conclusion.	Declaration of Patrick		
	Fed. R. Evid. 701, 702.	Zhang, confirms that Passe		
	This statement includes	scraped Famous Birthdays		
	improper opinion testimony.	bios, fed them into		
	Lay witnesses may only	ChatGPT, and then used the		
	offer opinions that are	results to launch Passes		
	rationally based on their	Wiki.		
	perception and helpful to			
	understanding their			
	testimony. According to his			
	public LinkedIn page, Mr.			

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To:	Grounds for Objection:	Response:	
	Britton has a background in		
	marketing.		
	Fed. R. Evid. 703. Mr.		
	Britton's statement also		
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
33. The result is that	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
Passes Wiki—a public	Britton's statement is	based on his rational	
website—now displays	conclusory, speculative, and	perception, and has	
over 100,000 bios that are	not based on personal	provided underlying	
virtually identical to	knowledge. He does not	screenshots confirming the	
Famous Birthdays'	offer any specific facts to	copying of Famous	
copyrighted bios. Britton	support this conclusion. Nor	Birthdays' bios by Passes.	
Decl., ¶ 22	does he explain how it is	Fed. R. Evid. 701.	
	that he has the knowledge	Moreover, Passes'	
	necessary to reach the stated	Opposition, including the	
	conclusion.	Declaration of Patrick	
	Fed. R. Evid. 701, 702.	Zhang, confirms that Passes	
	This statement includes	scraped Famous Birthdays'	
	improper opinion testimony.	bios, fed them into	
	Lay witnesses may only	ChatGPT, and then used the	
	offer opinions that are	results to launch Passes	
	rationally based on their	Wiki.	
	perception and helpful to		

2	7
2	8

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To:	Grounds for Objection:	Response:	
	understanding their		
	testimony. According to his		
	public LinkedIn page, Mr.		
	Britton has a background in		
	marketing.		
34. To my knowledge,	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
Passes Wild did not exist	Britton's statement is	based on his rational	
when Famous Birthdays	conclusory, speculative, and	perception, and has	
entered into the Services	not based on personal	provided underlying	
Agreement with Passes. It	knowledge. He does not	screenshots confirming the	
appears Passes Wiki was	offer any specific facts to	copying of Famous	
only launched after, and	support this conclusion. Nor	Birthdays' bios by Passes.	
using the data obtained	does he explain how it is	Fed. R. Evid. 701.	
from, the wholesale theft	that he has the knowledge	Moreover, Passes'	
of Famous Birthdays'	necessary to reach the stated	Opposition, including the	
bios. Britton Decl., ¶ 23	conclusion.	Declaration of Patrick	
	Fed. R. Evid. 703. Mr.	Zhang, confirms that Passes	
	Britton's statement also	scraped Famous Birthdays'	
	improperly offers an	bios, fed them into	
	opinion on an ultimate issue	ChatGPT, and then used the	
	in the case.	results to launch Passes	
		Wiki.	
35. It appears to solely	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
exist to confuse search	Britton's statement is	based on his rational	
engines, driving traffic	conclusory, speculative, and	perception, and has	

1	DECLARA	DECLARATION OF EVAN BRITTON (DKT. 11-1)		
2 3	Material Objected To:	Grounds for Objection:	Response:	
4	from Famous Birthdays to	not based on personal	provided underlying	
5	Passes Wiki by being a	knowledge. He does not	screenshots confirming the	
6	featured search result,	offer any specific facts to	copying of Famous	
7	which then allows Passes	support this conclusion. Nor	Birthdays' bios by Passes.	
8	to promote its core	does he explain how it is	Fed. R. Evid. 701.	
9	business of a subscriber	that he has the knowledge		
10	database to connect	necessary to reach the stated		
11	influencers and creators	conclusion.		
12	with companies and fans.	Fed. R. Evid. 701, 702.		
13	Britton Decl., ¶ 24	This statement includes		
14		improper opinion testimony.		
15		Lay witnesses may only		
16		offer opinions that are		
17		rationally based on their		
18		perception and helpful to		
19		understanding their		
20		testimony. According to his		
21		public LinkedIn page, Mr.		
22		Britton has a background in		
23		marketing.		
24	36. Famous Birthdays'	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
25	forensic analysis revealed	Britton's statement is	based on his rational	
26	that its API was pinged	conclusory, speculative, and	perception, and the API call	
27	106,124 times, each time	not based on personal	logs reflecting the forensic	
28	with a unique URL query	knowledge. He does not	analysis referenced are	

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To:	Grounds for Objection:	Response:	
that would bring up a	offer any specific facts to	attached as Exhibit D to the	
different profile, such that	support this conclusion. Nor	Ostrowski Declaration.	
a bio was brought up and	does he explain how it is	Fed. R. Evid. 701.	
scraped one by one every	that he has the knowledge	Moreover, Passes'	
2 seconds between	necessary to reach the stated	Opposition, including the	
April 14, 2024 and	conclusion.	Declaration of Patrick	
April 20, 2024. Britton	Fed. R. Evid. 701, 702.	Zhang, confirms that Passes	
Decl., ¶ 25	This statement includes	scraped Famous Birthdays'	
	improper opinion testimony.	bios, fed them into	
	Lay witnesses may only	ChatGPT, and then used the	
	offer opinions that are	results to launch Passes	
	rationally based on their	Wiki.	
	perception and helpful to		
	understanding their		
	testimony. According to his		
	public LinkedIn page, Mr.		
	Britton has a background in		
	marketing.		
37. The foregoing	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
frequency could not	Britton's statement is	based on his rational	
feasibly be achieved by an	conclusory, speculative, and	perception, and the API call	
individual searching for	not based on personal	logs reflecting the forensic	
profiles manually and	knowledge. He does not	analysis referenced are	
could only be done	offer any specific facts to	attached as Exhibit D to the	
through use of an	support this conclusion. Nor	Ostrowski Declaration.	

1		DECLARA	ATION OF EVAN BRITTON	(DKT. 11-1)
3		Material Objected To:	Grounds for Objection:	Response:
4	.	automated script. Britton	does he explain how it is	Fed. R. Evid. 701.
5		Decl., ¶ 26	that he has the knowledge	Moreover, Passes'
6			necessary to reach the stated	Opposition, including the
7	.		conclusion.	Declaration of Patrick
8			Fed. R. Evid. 701, 702.	Zhang, confirms that Passes
9			This statement includes	scraped Famous Birthdays'
10			improper opinion testimony.	bios, fed them into
11			Lay witnesses may only	ChatGPT, and then used the
12	.		offer opinions that are	results to launch Passes
13			rationally based on their	Wiki.
14			perception and helpful to	
15			understanding their	
16			testimony. According to his	
17			public LinkedIn page, Mr.	
18			Britton has a background in	
19			marketing.	
20			Fed. R. Evid. 703. Mr.	
21			Britton's statement also	
22	.		improperly offers an	
23			opinion on an ultimate issue	
24	.		in the case.	
25		38. At my direction,	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying
26		Famous Birthdays' staff	Britton's statement is	based on his rational
27		has taken tens of	conclusory, speculative, and	perception, and has
28		thousands of screenshots	not based on personal	provided underlying

Katten Muchin Rosenman LLP 2121 Avenue of the Stars, Suite Los Angeles, CA 90067-5010

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To:	Grounds for Objection:	Response:	
39. Defendants'	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
attorneys admitted to their	Britton's statement is	based on his rational	
use of a chatbot in	conclusory, speculative, and	perception, and has	
response to a cease and	not based on personal	provided underlying	
desist letter from counsel	knowledge. Mr. Britton	screenshots confirming the	
for Famous Birthdays.	does not offer any specific	copying of Famous	
Britton Decl., ¶ 28.	facts to support this	Birthdays' bios by Passes.	
	conclusion. Nor does he	Fed. R. Evid. 701.	
	explain how it is that he has	Moreover, Passes'	
	the knowledge necessary to	Opposition, including the	
	reach the stated conclusion.	Declaration of Patrick	
	Fed. R. Evid. 803. Hearsay	Zhang, confirms that Passes	
	is impermissible. Mr.	scraped Famous Birthdays'	
	Britton's statement that	bios, fed them into	
	"Defendants' attorneys	ChatGPT, and then used the	
	admitted" is an	results to launch Passes	
	impermissible out of court	Wiki.	
	statement used to prove the		
	truth of the statement.		
40. Even where	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
Famous Birthdays puts a	Britton's statement is	based on his rational	
random profession in a	conclusory, speculative, and	perception, and has	
URL—something which it	not based on personal	provided underlying	
rarely utilizes for	knowledge. He does not	screenshots confirming the	
mainstream stars—Passes	offer any specific facts to	copying of Famous	

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To:	Grounds for Objection:	Response:	
also exactly copies the	support this conclusion. Nor	Birthdays' bios by Passes.	
URL[.] Britton Decl., ¶ 64	does he explain how it is	Fed. R. Evid. 701.	
	that he has the knowledge	Moreover, Passes'	
	necessary to reach the stated	Opposition, including the	
	conclusion.	Declaration of Patrick	
	Fed. R. Evid. 701, 702.	Zhang, confirms that Pass	
	This statement includes	scraped Famous Birthday	
	improper opinion testimony.	bios, fed them into	
	Lay witnesses may only	ChatGPT, and then used t	
	offer opinions that are	results to launch Passes	
	rationally based on their	Wiki.	
	perception and helpful to		
	understanding their		
	testimony. According to his		
	public LinkedIn page, Mr.		
	Britton has a background in		
	marketing.		
	Fed. R. Evid. 703. Mr.		
	Britton's statement also		
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
41. Famous Birthdays	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
investment into this space	Britton's statement is	based on his rational	
for well over a decade has	conclusory, speculative, and	perception of Famous	

DECLARATION OF EVAN BRITTON (DKT. 11-1)		
Material Objected To:	Grounds for Objection:	Response:
gained Famous Birthdays	not based on personal	Birthdays' business mode
valuable search engine	knowledge. He does not	as its CEO and founder—
positioning that drives	offer any specific facts to	is well-aware of its search
users to its website.	support this conclusion. Nor	engine positioning and he
Britton Decl., ¶ 66.	does he explain how it is	his own website generate
	that he has the knowledge	user traffic. Fed. R. Evid
	necessary to reach the stated	701.
	conclusion.	
	Fed. R. Evid. 701, 702.	
	This statement includes	
	improper opinion testimony.	
	Lay witnesses may only	
	offer opinions that are	
	rationally based on their	
	perception and helpful to	
	understanding their	
	testimony. According to his	
	public LinkedIn page, Mr.	
	Britton has a background in	
	marketing.	
	Fed. R. Evid. 703. Mr.	
	Britton's statement also	
	improperly offers an	
	opinion on an ultimate issue	
	in the case.	

1	DECLARATION OF EVAN BRITTON (DKT. 11-1)		
$\begin{vmatrix} 2 \\ 3 \end{vmatrix}$	Material Objected To:	Grounds for Objection:	Response:
4	42. Passes Wiki is now	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying
5	actively competing with	Britton's statement is	based on his rational
6	the core offering of our	conclusory, speculative, and	perception of Famous
7	business by publicly	not based on personal	Birthdays' business model,
8	displaying bios—which it	knowledge. He does not	as its CEO and founder—he
9	wrongfully took from	offer any specific facts to	is well-aware of its search
10	Famous Birthdays—on a	support this conclusion. Nor	engine positioning and how
11	public-facing website in a	does he explain how it is	his own website generates
12	similar format to Famous	that he has the knowledge	user traffic, as well as the
13	Birthdays. This is creating	necessary to reach the stated	competition posed by a
14	significant confusion with	conclusion.	public-facing Wiki that
15	search engines, by	Fed. R. Evid. 701, 702.	displays its bios. Fed. R.
16	featuring Famous	This statement includes	Evid. 701.
17	Birthdays' proprietary	improper opinion testimony.	
18	information, structure, and	Lay witnesses may only	
19	even URL scheme. Britton	offer opinions that are	
20	Decl., ¶ 67.	rationally based on their	
21		perception and helpful to	
22		understanding their	
23		testimony. According to his	
24		public LinkedIn page, Mr.	
25		Britton has a background in	
26		marketing.	
27		Fed. R. Evid. 703. Mr.	
28		Britton's statement also	

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To:	Grounds for Objection:	Response:	
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
43. Search engine	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
traffic is an essential part	Britton's statement is	based on his rational	
of Famous Birthdays'	conclusory, speculative, and	perception of Famous	
business, and Passes Wiki	not based on personal	Birthdays' business model,	
is actively usurping our	knowledge. He does not	as its CEO and founder—he	
search engine positioning,	offer any specific facts to	is well-aware of its search	
thus diverting traffic from	support this conclusion. Nor	engine positioning and how	
our website. Britton Decl.,	does he explain how it is	his own website generates	
¶ 68	that he has the knowledge	user traffic, as well as third-	
	necessary to reach the stated	party analytics reflecting	
	conclusion.	the loss of traffic after	
	Fed. R. Evid. 701, 702.	Passes Wiki launched. Fed.	
	This statement includes	R. Evid. 701.	
	improper opinion testimony.		
	Lay witnesses may only		
	offer opinions that are		
	rationally based on their		
	perception and helpful to		
	understanding their		
	testimony. According to his		
	public LinkedIn page, Mr.		

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To:	Grounds for Objection:	Response:	
	Britton has a background in		
	marketing.		
	Fed. R. Evid. 703. Mr.		
	Britton's statement also		
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
44. The longer Passes'	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
infringing bios are live on	Britton's statement is	based on his rational	
Passes Wiki and indexed	conclusory, speculative, and	perception of Famous	
by major search engines,	not based on	Birthdays' business model,	
the more difficult it will	personal knowledge. He	as its CEO and founder—he	
be to unwind the long-	does not offer any specific	is well-aware of its search	
term harm on our search	facts to support this	engine positioning and how	
engine optimization	conclusion. Nor does he	his own website generates	
("SEO"), as we will	explain how it is that he has	user traffic, as well as third-	
continue to lose our	the knowledge necessary to	party analytics reflecting	
valuable search engine	reach the stated conclusion.	the loss of traffic after	
positioning that we have	Fed. R. Evid. 701, 702.	Passes Wiki launched. Fed.	
obtained through SEO	This statement includes	R. Evid. 701.	
efforts over the last 12.5	improper opinion testimony.		
years. Britton Decl., ¶ 68	Lay witnesses may only		
	offer opinions that are		
	rationally based on their		
	perception and helpful to		

DECLAR	ATION OF EVAN BRITTON	(DKT. 11-1)	
Material Objected To:	Grounds for Objection:	Response:	
	understanding their		
	testimony. According to his		
	public LinkedIn page, Mr.		
	Britton has a background in		
	marketing.		
	Fed. R. Evid. 703. Mr.		
	Britton's statement also		
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
45. The longer Passes	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
Wiki remains on the open	Britton's statement is	based on his rational	
web, infringing Famous	conclusory, speculative, and	perception of Famous	
Birthdays' Works	not based on personal	Birthdays' business model,	
unabated, the more	knowledge. He does not	as its CEO and founder—he	
difficult it will be to	offer any specific facts to	is well-aware of its search	
unwind the harm done to	support this conclusion. Nor	engine positioning and how	
Famous Birthdays'	does he explain how it is	his own website generates	
position as the premiere	that he has the knowledge	user traffic, as well as third	
source of bios in the	necessary to reach the stated	party analytics reflecting	
format that we have	conclusion.	the loss of traffic after	
developed and perfected	Fed. R. Evid. 701, 702.	Passes Wiki launched. Fed	
over 12.5 years. Britton	This statement includes	R. Evid. 701.	
Decl., ¶ 69	improper opinion testimony.		
	Lay witnesses may only		

+1.310.788.4400 tel +1.310.788.4471 fax		

•	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To:	Grounds for Objection:	Response:	
	offer opinions that are		
	rationally based on their		
	perception and helpful to		
	understanding their		
	testimony. According to his		
	public LinkedIn page, Mr.		
	Britton has a background in		
	marketing.		
	Fed. R. Evid. 703. Mr.		
	Britton's statement also		
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
46. My analysis has	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
shown that Passes Wiki is	Britton's statement is	based on his rational	
diverting hundreds of	conclusory, speculative, and	perception of Famous	
thousands of viewers	not based on personal	Birthdays' business model,	
every month away from	knowledge. He does not	as its CEO and founder—he	
Famous Birthdays. Every	offer any specific facts to	is well-aware of its search	
viewer diverted away	support this conclusion. Nor	engine positioning and how	
from Famous Birthdays is	does he explain how it is	his own website generates	
also a potential long-term	that he has the knowledge	user traffic, as well as third-	
customer. This is causing	necessary to reach the stated	party analytics reflecting	
us to lose long-term	conclusion.	the loss of traffic after	

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To	Grounds for Objection:	Response:	
revenue. Britton Decl.,	¶ Fed. R. Evid. 701, 702.	Passes Wiki launched. Fed.	
70.	This statement includes	R. Evid. 701.	
	improper opinion testimony.		
	Lay witnesses may only		
	offer opinions that are		
	rationally based on their		
	perception and helpful to		
	understanding their		
	testimony. According to his		
	public LinkedIn page, Mr.		
	Britton has a background in		
	marketing.		
	Fed. R. Evid. 703. Mr.		
	Britton's statement also		
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
47. Passes'	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
infringement has impac	ted Britton's statement is	based on his rational	
Famous Birthdays' SEG	o, conclusory, speculative, and	perception of Famous	
confusing search engin	es. not based on personal	Birthdays' business model,	
Britton Decl., ¶ 71.	knowledge. He does not	as its CEO and founder—he	
	offer any specific facts to	is well-aware of its search	
	support this conclusion. Nor	engine positioning and how	
	does he explain how it is	his own website generates	

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To:	Grounds for Objection:	Response:	
	that he has the knowledge	user traffic, as well as thin	
	necessary to reach the stated	party analytics reflecting	
	conclusion.	the loss of traffic after	
	Fed. R. Evid. 701, 702.	Passes Wiki launched. Fo	
	This statement includes	R. Evid. 701.	
	improper opinion testimony.		
	Lay witnesses may only		
	offer opinions that are		
	rationally based on their		
	perception and helpful to		
	understanding their		
	testimony. According to his		
	public LinkedIn page, Mr.		
	Britton has a background in		
	marketing.		
	Fed. R. Evid. 703. Mr.		
	Britton's statement also		
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
48. My analysis,	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
including third-party	Britton's statement is	based on his rational	
analytical data I have	conclusory, speculative, and	perception of Famous	
reviewed, shows that	not based on personal	Birthdays' business mode	
Passes is diverting	knowledge. He does not	as its CEO and founder—	

DECLARATION OF EVAN BRITTON (DKT. 11-1)			
Material Objected To:	Grounds for Objection:	Response:	
hundreds of thousands of	offer any specific facts to	is well-aware of its sear	
visitors to Passes Wiki,	support this conclusion. Nor	engine positioning and l	
which visitors would	does he explain how it is	his own website generat	
otherwise be visitors of	that he has the knowledge	user traffic, as well as the	
Famous Birthdays. Britton	necessary to reach the stated	party analytics reflectin	
Decl., ¶ 72.	conclusion.	the loss of traffic after	
	Fed. R. Evid. 701, 702.	Passes Wiki launched.	
	This statement includes	R. Evid. 701.	
	improper opinion testimony.		
	Lay witnesses may only		
	offer opinions that are		
	rationally based on their		
	perception and helpful to		
	understanding their		
	testimony. According to his		
	public LinkedIn page, Mr.		
	Britton has a background in		
	marketing.		
	Fed. R. Evid. 703. Mr.		
	Britton's statement also		
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
	Fed. R. Evid. 803. Hearsay		

is impermissible. Mr.

Material Objected To:	Grounds for Objection:	Response:	
	Britton refers to		
	unidentified "third-party		
	analytical data," which is an		
	out-of-court statement to		
	prove the truth of his		
	statement.		
49. For some keyword	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
searches, Passes ranks	Britton's statement is	based on his rational	
above Famous Birthdays	conclusory, speculative, and	perception of Famous	
in search results for	not based on personal	Birthdays' business model,	
Famous Birthdays' own	knowledge. He does not	as its CEO and founder—h	
biographical listing, and	offer any specific facts to	is well-aware of its search	
in some cases, Passes is	support this conclusion. Nor	engine positioning and how	
shown in the featured	does he explain how it is	his own website generates	
snippets, instead of	that he has the knowledge	user traffic, as well as third	
Famous Birthdays, and in	necessary to reach the stated	party analytics reflecting	
other cases Passes Wiki is	conclusion.	the loss of traffic after	
a result below Famous	Fed. R. Evid. 701, 702.	Passes Wiki launched. Fed	
Birthdays, but still on the	This statement includes	R. Evid. 701.	
same page, which also	improper opinion testimony.		
causes confusion. Britton	Lay witnesses may only		
Decl., ¶ 73.	offer opinions that are		
	rationally based on their		
	perception and helpful to		
	understanding their		

DECLARA	ATION OF EVAN BRITTON	(DKT. 11-1)	
Material Objected To:	Grounds for Objection:	Response:	
	testimony. According to his		
	public LinkedIn page, Mr.		
	Britton has a background in		
	marketing.		
	Fed. R. Evid. 703. Mr.		
	Britton's statement also		
	improperly offers an		
	opinion on an ultimate issue		
	in the case.		
50. Passes is diverting	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying	
hundreds of thousands of	Britton's statement is	based on his rational	
users per month away	conclusory, speculative, and	perception of Famous	
from Famous Birthdays,	not based on personal	Birthdays' business model,	
which is causing Passes to	knowledge. He does not	as its CEO and founder—h	
lose potential long- term	offer any specific facts to	is well-aware of its search	
users and future revenue.	support this conclusion. Nor	engine positioning and how	
Britton Decl., ¶ 76.	does he explain how it is	his own website generates	
	that he has the knowledge	user traffic, as well as third	
	necessary to reach the stated	party analytics reflecting	
	conclusion.	the loss of traffic after	
	Fed. R. Evid. 701, 702.	Passes Wiki launched. Fed	
	This statement includes	R. Evid. 701.	
	improper opinion testimony.		
	Lay witnesses may only		
	offer opinions that are		

				1 fa
		8		tel +1.310.788.4471
		Ξ		84
	9	#	9	37.
	7	S	20	픐
	Catten Muchin Rosenman LLF	tars	67	+1.310.788.4400 tel +1.310.788.447
	sen	e S	96	<u>-</u>
•	å	€	4	90
)	ij	9	S	4
	Jul Jul	enr	ele	88
	-	Š	ŝ	0
	atte	121	S	5
	¥	'n	۲	+

Matarial Objected To	Crounds for Objection	Dagnanga
Material Objected To:	Grounds for Objection:	Response:
	rationally based on their	
	perception and helpful to	
	understanding their	
	testimony. According to his	
	public LinkedIn page, Mr.	
	Britton has a background in	
	marketing.	
	Fed. R. Evid. 703. Mr.	
	Britton's statement also	
	improperly offers an	
	opinion on an ultimate issue	
	in the case.	
51. Indeed, Passes	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying
Wiki includes sign-up and	Britton's statement is	based on his rational
referral buttons,	conclusory, speculative, and	perception of Famous
attempting to gain long-	not based on personal	Birthdays' business model
term loyal users for	knowledge. He does not	as its CEO and founder—h
Passes' services through	offer any specific facts to	is well-aware of its search
its use of Famous	support this conclusion. Nor	engine positioning and how
Birthdays' copyrighted	does he explain how it is	his own website generates
bios. Every such user is a	that he has the knowledge	user traffic, as well as third
potential Famous	necessary to reach the stated	party analytics reflecting
Birthdays user that	conclusion.	the loss of traffic after
Famous Birthdays may	Fed. R. Evid. 701, 702.	Passes Wiki launched. Fed
	This statement includes	R. Evid. 701.

party analytics reflecting

DECLARATION OF EVAN BRITTON (DKT. 11-1)		
Material Objected To:	Grounds for Objection:	Response:
	necessary to reach the stated	the loss of traffic after
	conclusion.	Passes Wiki launched. Fed.
	Fed. R. Evid. 701, 702.	R. Evid. 701.
	This statement includes	
	improper opinion testimony.	
	Lay witnesses may only	
	offer opinions that are	
	rationally based on their	
	perception and helpful to	
	understanding their	
	testimony. According to his	
	public LinkedIn page, Mr.	
	Britton has a background in	
	marketing.	
53. Passes'	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying
infringement, which is	Britton's statement is	based on his rational
publicly putting Famous	conclusory, speculative, and	perception of Famous
Birthdays' copyrighted	not based on personal	Birthdays' business model,
bios on the open web,	knowledge. He does not	as its CEO and founder—he
without any Terms of	offer any specific facts to	is well-aware of its search
Service, notice of	support this conclusion. Nor	engine positioning and how
copyright protections, or	does he explain how it is	his own website generates
other warnings to the	that he has the knowledge	user traffic, as well as third-
public, is also devaluing	necessary to reach the stated	party analytics reflecting
Famous Birthdays'	conclusion.	the loss of traffic after

DECLARATION OF EVAN BRITTON (DKT. 11-1)		
Material Objected To:	Grounds for Objection:	Response:
intellectual property.	Fed. R. Evid. 701, 702.	Passes Wiki launched. Fed.
Britton Decl., ¶ 78.	This statement includes	R. Evid. 701. Moreover,
	improper opinion testimony.	Mr. Britton is well-aware of
	Lay witnesses may only	efforts he has undertaken to
	offer opinions that are	protect Famous Birthdays'
	rationally based on their	intellectual property and the
	perception and helpful to	damage to those efforts
	understanding their	caused by Passes' publicly
	testimony. According to his	displaying the bios without
	public LinkedIn page, Mr.	any protections.
	Britton has a background in	
	marketing.	
	Fed. R. Evid. 703. Mr.	
	Britton's statement also	
	improperly offers an	
	opinion on an ultimate issue	
	in the case.	
54. Passes Wiki users	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying
can now manipulate and	Britton's statement is	based on his rational
misuse the content on	conclusory, speculative, and	perception of Famous
Passes Wiki, as they have	not based on personal	Birthdays' business model,
no notice whatsoever that	knowledge. He does not	as its CEO and founder—he
the content is itself	offer any specific facts to	is well-aware of its search
infringing on Famous	support this conclusion. Nor	engine positioning and how
Birthdays' copyrighted	does he explain how it is	his own website generates

Material Objected To:	Grounds for Objection:	Response:
Works—the bios are	that he has the knowledge	user traffic, as well as thir
simply presented on	necessary to reach the stated	party analytics reflecting
Passes Wiki without any	conclusion.	the loss of traffic after
restrictions on public use	Fed. R. Evid. 701, 702.	Passes Wiki launched. Fe
of them. This is severely	This statement includes	R. Evid. 701. Moreover,
undermining our ability to	improper opinion testimony.	Mr. Britton is well-aware
protect our intellectual	Lay witnesses may only	efforts he has undertaken t
property and rendering it	offer opinions that are	protect Famous Birthdays'
vulnerable to	rationally based on their	intellectual property and tl
unauthorized use and	perception and helpful to	damage to those efforts
further exploitation.	understanding their	caused by Passes' publicly
Britton Decl., ¶ 79.	testimony. According to his	displaying the bios withou
	public LinkedIn page, Mr.	any protections.
	Britton has a background in	
	marketing.	
	Fed. R. Evid. 703. Mr.	
	Britton's statement also	
	improperly offers an	
	opinion on an ultimate issue	
	in the case.	
55. This is also	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying
creating confusion for	Britton's statement is	based on his rational
users, by devaluing our IP	conclusory, speculative, and	perception of Famous
on the public web, as	not based on personal	Birthdays' business model
Passes Wiki is presenting	knowledge. He does not	as its CEO and founder—h

DECLARATION OF EVAN BRITTON (DKT. 11-1)		
Material Objected To:	Grounds for Objection:	Response:
these bios without any	offer any specific facts to	is well-aware of its search
protections. Britton Decl.,	support this conclusion. Nor	engine positioning and how
¶ 80	does he explain how it is	his own website generates
	that he has the knowledge	user traffic, as well as third-
	necessary to reach the stated	party analytics reflecting
	conclusion.	the loss of traffic after
	Fed. R. Evid. 701, 702.	Passes Wiki launched. Fed.
	This statement includes	R. Evid. 701. Moreover,
	improper opinion testimony.	Mr. Britton is well-aware of
	Lay witnesses may only	efforts he has undertaken to
	offer opinions that are	protect Famous Birthdays'
	rationally based on their	intellectual property and the
	perception and helpful to	damage to those efforts
	understanding their	caused by Passes' publicly
	testimony. According to his	displaying the bios without
	public LinkedIn page, Mr.	any protections.
	Britton has a background in	
	marketing.	
56. Passes Wiki is	Fed. R. Evid. 602. Mr.	Mr. Britton is testifying
actively hurting Famous	Britton's statement is	based on his rational
Birthdays Pro's marketing	conclusory, speculative, and	perception of Famous
pitch, which relies on	not based on personal	Birthdays' business model,
first-party proprietary bios	knowledge. He does not	as its CEO and founder—he
that can only be leveraged	offer any specific facts to	is well-aware of its search
	support this conclusion. Nor	engine positioning and how

DECLARATION OF EVAN BRITTON (DKT. 11-1)		
Material Objected To:	Grounds for Objection:	Response:
within Famous Birthdays	does he explain how it is	his own website generates
Pro. Britton Decl., ¶ 81.	that he has the knowledge	user traffic, as well as third-
	necessary to reach the stated	party analytics reflecting
	conclusion.	the loss of traffic after
	Fed. R. Evid. 701, 702.	Passes Wiki launched. Fed.
	This statement includes	R. Evid. 701. Moreover,
	improper opinion testimony.	Mr. Britton is well-aware of
	Lay witnesses may only	efforts he has undertaken to
	offer opinions that are	protect Famous Birthdays'
	rationally based on their	intellectual property and the
	perception and helpful to	damage to those efforts
	understanding their	caused by Passes' publicly
	testimony. According to his	displaying the bios without
	public LinkedIn page, Mr.	any protections.
	Britton has a background in	
	marketing.	
	Fed. R. Evid. 703. Mr.	
	Britton's statement also	
	improperly offers an	
	opinion on an ultimate issue	
	in the case.	

DECLARATION OF EVAN BRITTON (DKT. 10)		
Material Objected To:	Grounds for Objection:	Response:

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

57.

Exhibits B, C, and D to the Ostrowski Declaration contain Famous Birthdays' confidential source code and Application Programming Interface ("API") calls. Britton Decl. ISO Sealing, ¶ 2.

Fed. R. Evid. 602. Mr. Britton's statement is conclusory, speculative, and not based on personal knowledge. He does not offer any specific facts to support this conclusion. Nor does he explain how it is that he has the knowledge necessary to reach the stated conclusion. A witness must

lay a foundation before

offering testimony about

documents, establishing that

the witness is competent to

testify about the matter at

particular facts or

hand.

Fed. R. Evid. 1002. In addition, Mr. Britton's statement violates the Best Evidence Rule. An original writing, recording, or photograph is required in order to prove its content.

Fed. R. Evid. 703. Mr. Britton's statement also As Founder and CEo of Famous Birthdays, Mr. Britton is testifying based on his rational perception of his own company's proprietary information and API calls. Fed. R. Evid. 701.

1		improperly offers an	
2		opinion on an ultimate issue	
3		in the case.	
4	58. Declaration Exhibit	Fed. R. Evid. 602. Mr.	As Founder and CEo of
5	B consists of API	Britton's statement is	Famous Birthdays, Mr.
6	instructions Famous	conclusory, speculative, and	Britton is testifying based
7	Birthdays provided to	not based on personal	on his rational perception of
8	Defendant Passes, Inc.	knowledge. He does not	his own company's
9	("Passes"), in connection	offer any specific facts to	proprietary information and
10	with the services	support this conclusion. Nor	API calls. Fed. R. Evid.
11	agreement between the	does he explain how it is	701.
12	parties. These API	that he has the knowledge	
13	instructions are not	necessary to reach the stated	
14	publicly available and are	conclusion. A witness must	
15 16	only provided to paying	lay a foundation before	
17	Famous Birthdays'	offering testimony about	
18	customers, subject to	particular facts or	
19	strict contractual terms.	documents, establishing that	
20	Britton Decl. ISO Sealing,	the witness is competent to	
21	¶ 3.	testify about the matter at	
22		hand.	
23		Fed. R. Evid. 1002. In	
24		addition, Mr. Britton's	
25		statement violates the Best	
26		Evidence Rule. An original	
27		writing, recording, or	
21			

Katten Muchin Rosenman LLP 2121 Avenue of the Stars, Suite 1100 Los Angeles, CA 90067-5010 +1.310 788.4401 tel +1.310 788.4471 fax

	perception and helpful to	
	understanding their	
	testimony.	
	Fed. R. Evid. 703. Mr.	
	Britton's statement also	
	improperly offers an	
	opinion on an ultimate issue	
	in the case.	
	Fed. R. Evid. 1002. In	
	addition, Mr. Britton's	
	statement violates the Best	
	Evidence Rule. An original	
	writing, recording, or	
	photograph is required in	
	order to prove its content.	
60. The information	Fed. R. Evid. 602. Mr.	As Founder and CEo of
contained in Famous	Britton's statement is	Famous Birthdays, Mr.
Birthdays' API includes	1 1 2 1	
Birthau's Till I merades	conclusory, speculative, and	Britton is testifying based
its copyrighted	not based on personal	Britton is testifying based on his rational perception of
	· -	, ,
its copyrighted	not based on personal	on his rational perception of
its copyrighted biographies of over	not based on personal knowledge. He does not	on his rational perception of his own company's
its copyrighted biographies of over 100,000 celebrities and	not based on personal knowledge. He does not offer any specific facts to	on his rational perception of his own company's proprietary information and
its copyrighted biographies of over 100,000 celebrities and influencers, which are the	not based on personal knowledge. He does not offer any specific facts to support this conclusion. Nor	on his rational perception of his own company's proprietary information and API calls. Fed. R. Evid.
its copyrighted biographies of over 100,000 celebrities and influencers, which are the backbone of its business.	not based on personal knowledge. He does not offer any specific facts to support this conclusion. Nor does he explain how it is	on his rational perception of his own company's proprietary information and API calls. Fed. R. Evid.

lay a foundation before

offering testimony about particular facts or documents, establishing that the witness is competent to testify about the matter at hand.

Fed. R. Evid. 701, 702.

This statement includes

improper opinion testimony.

Mr. Britton has a marketing background. Lay witnesses may only offer opinions that are rationally based on their perception and helpful to understanding their testimony.

Fed. R. Evid. 703. Mr.

Britton's statement also improperly offers an opinion on an ultimate issue in the case.

Fed. R. Evid. 1002. In addition, Mr. Britton's statement violates the Best Evidence Rule. An original writing, recording, or

	photograph is required in	
	order to prove its content.	
61. Allowing Famous	Fed. R. Evid. 602. Mr.	As Founder and CEo of
Birthdays' API call	Britton's statement is	Famous Birthdays, Mr.
instructions to be publicly	conclusory, speculative, and	Britton is testifying based
available would render its	not based on personal	on his rational perception of
API vulnerable to security	knowledge. He does not	his own company's
breaches and would also	offer any specific facts to	proprietary information and
allow competitors to view	support this conclusion. Nor	API calls. Fed. R. Evid.
how it constructs its API.	does he explain how it is	701.
Britton Decl. ISO Sealing,	that he has the knowledge	
¶ 6.	necessary to reach the stated	
	conclusion.	
	Fed. R. Evid. 701, 702.	
	This statement includes	
	improper opinion testimony.	
	Lay witnesses may only	
	offer opinions that are	
	rationally based on their	
	perception and helpful to	
	understanding their	
	testimony. According to his	
	public LinkedIn page, Mr.	
	Britton has a background in	
	marketing.	
	Fed. R. Evid. 703. Mr.	
	Britton's statement also	

	improperly offers an	
	opinion on an ultimate issue	
	in the case.	
62. Ostrowski	Fed. R. Evid. 602. Mr.	As Founder and CEo of
Declaration Exhibit C	Britton's statement is	Famous Birthdays, Mr.
consists of a screenshot	conclusory, speculative, and	Britton is testifying based
from Famous Birthdays'	not based on personal	on his rational perception of
paywalled "Famous	knowledge. He does not	his own company's
Birthdays Pro" website,	offer any specific facts to	proprietary information and
which is only accessible	support this conclusion. Nor	API calls. Fed. R. Evid.
to paying clients, subject	does he explain how it is	701.
to strict contractual terms	that he has the knowledge	
and Terms of Use. This	necessary to reach the stated	
screenshot also shows the	conclusion.	
back-end source code that	Fed. R. Evid. 701, 702.	
populates Famous	This statement includes	
Birthdays Pro, including	improper opinion testimony.	
Famous Birthdays'	Lay witnesses may only	
internal API calls that can	offer opinions that are	
be used to ping Famous	rationally based on their	
Birthdays' API and	perception and helpful to	
retrieve information that	understanding their	
is only meant for Famous	testimony. According to his	
Birthdays personnel.	public LinkedIn page, Mr.	
Britton Decl. ISO Sealing,	Britton has a background in	
¶ 7.	marketing.	

Fed. R. Evid. 703. Mr.

	B1
	in
	op
	in
63. Ostrowski	Fe
Declaration Exhibit D is	Bı
the access log showing	co
that Passes pinged	nc
Famous Birthdays' API,	kr
with the internal API call	of
surreptitiously taken from	su
the Famous Birthdays Pro	do
source code, over 100,000	th
times. Because this also	Fe
contains Famous	Tl
Birthdays' internal API	in
call, public display of it	La
carries the same risks of	of
competitive harm and	ra
hacking as Ostrowski	pe
Declaration Exhibit C.	ur
Britton Decl. ISO Sealing,	te
\P 9.	pι
	ı

Britton's statement also	
improperly offers an	
opinion on an ultimate issue	
in the case.	
Fed. R. Evid. 602. Mr.	As Founder and CEo of
Britton's statement is	Famous Birthdays, Mr.
conclusory, speculative, and	Britton is testifying based
not based on personal	on his rational perception of
knowledge. He does not	his own company's
offer any specific facts to	proprietary information and
support this conclusion. Nor	API calls. Fed. R. Evid.
does he explain how it is	701.
that he has the knowledge.	
Fed. R. Evid. 701, 702.	
This statement includes	
improper opinion testimony.	
Lay witnesses may only	
offer opinions that are	
rationally based on their	
perception and helpful to	
understanding their	
testimony. According to his	
public LinkedIn page, Mr.	
Britton has a background in	
marketing. necessary to	

reach the stated conclusion.

	Ш
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
	ı

25

26

27

28

DATED: November 19, 2024

64. My understanding	Fed. R. Evid. 602. Mr.
is no other party has yet	Britton's statement is
appeared in this matter,	conclusory, speculative, and
thus I am unaware if any	not based on personal
party opposes this	knowledge. He does not
Application. Britton Decl.	offer any specific facts to
ISO Sealing, ¶ 10.	support this conclusion. Nor
	does he explain how it is
	that he has the knowledge
	necessary to reach the stated
	conclusion.

Respectfully yours,

KATTEN MUCHIN ROSENMAN LLP

By:

CHRISTOPHER D. BEATTY Attorneys for Plaintiff FAMOUS BIRTHDAYS, LLC